

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
CUTTACK BENCH, CUTTACK**

**IA (IBC) No.197/CTB/2019**

**in**

**CP (IB) No.1/CTB/2019**

*In the matter of*

An application under section 30(2) r/w section 31(1) of the  
Insolvency & Bankruptcy Code, 2016

And

*In the matter of*

**CP (IB) No.1/CTB/2019**

Nandakini Contractors Private Limited ... Financial Creditor

Versus

Hirakud Industrial Works Limited ... Corporate Debtor

And

*In the matter of*

**IA (IBC) No.197/CTB/2019**

Ananda Rao Korada, Resolution Professional of  
Hirakud Industrial Works Limited ... Applicant

**Order reserved on: 06.10.2021**

**Order pronounced on: 22.12.2021**

***Coram:***

Shri Rajasekhar V.K. : Member (Judicial)

Shri Satya Ranjan Prasad : Member (Technical)

***Appearances (via videoconferencing):***

For the Applicant/Resolution Professional : Mr Krishnaraj Thaker, Advocate  
Mr Patit Paban Bishwal, Advocate  
Mr Chayan Gupta, Advocate  
Mr Ananda Rao Korada, RP

**ORDER**

*Per:* Rajasekhar V.K., Member (Judicial)

**1. Preamble**

1.1. The present Interlocutory Application (IA) – IA No.197/CTB/2019 in CP (IB) No.1/CTB/2019 filed by Mr. Ananda Rao Korada, the Resolution Professional

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of Hirakud Industrial Works Limited (*the Corporate Debtor*), under Section 30 (6) read with Section 31 (1) of the Insolvency and Bankruptcy Code (*'IBC' or 'the Code'*), seeking approval of this Adjudicating Authority for the Resolution Plan submitted by Regus Impex Private Limited for resolution of the corporate debtor.

**2. *The Corporate Insolvency Resolution Process (CIRP) of Hirakud Industrial Works Limited***

- 2.1. Nandakini Contractors Private Limited filed a petition bearing CP (IB) No.1/CTB/2019 under section 7 of the IBC read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, before this Adjudicating Authority, which was admitted *vide* detailed order dated 04.06.2019. Mr. Ananda Rao Korada, the Applicant herein, was appointed as the Interim Resolution Professional (IRP).
- 2.2. Public announcement of the commencement of CIRP was made on 7.06.2019 in *The Times of India (English)* and *Odisha Bhaskar (Odia)* newspapers, inviting creditors to file their claims with the IRP by 17.06.2019. Pursuant to this, the Committee of Creditors (CoC) was constituted.

*Constitution of CoC and voting share*

- 2.3. The constitution of the CoC and the voting share of each of the financial creditors are as follows:

Sl. No.	Financial Creditor	Voting Share Percentage
1.	Bank of India	0.56
2.	Dahisar Traders Private Limited	3.51
3.	Dunlop Polymers Private Limited	0.03
4.	Gain E Commerce Private Limited	31.59
5.	Luni Housing and Developers Private Limited	8.81

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Sl. No.	Financial Creditor	Voting Share Percentage
6.	Mekong Rubber Private Limited	0.13
7.	Miller Traders Private Limited	0.02
8.	Nandakini Contractors Private Limited	0.10
9.	Subhlaxmi Compusis Private Limited	55.25
Total		100.00

- 2.4. The first meeting of the CoC was held on 03.07.2019, at which the IRP was confirmed as the Resolution Professional (RP). Information Memorandum as required under section 29 of the IBC and regulation 36 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (*CIRP Regulations*) was submitted to the CoC on 16.07.2019 after receiving confidentiality undertakings from each member of the CoC.

*Appointment of valuers*

- 2.5. The liquidation value and fair value of the Company were determined by four registered valuers, viz., (1) Puneet Tyagi [Registration No. IBBI/RV/01/2018/10087]; (2) Ansuman Rath [Registration No. IBBI/RV/02/2019/11131]; for class of Assets "*Land & Building*"; and (3) Gunjan Agarwal [Registration No. IBBI/RV/06/2019/11466]; (4) Subhajit Guha [Registration No. IBBI/RV/06/2018/10171] for class of Assets "*Securities or Financial Assets*" as laid down in regulations 27 and 35 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

*Advertisements*

- 2.6. The RP issued advertisements on 08.08.2019 inviting resolution plans from prospective resolution applicants. The last date for submission of resolution

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plans was 03.10.2019 which was later extended till 25.10.2019. The RP received a total of two Expressions of Interest (EoIs).

*Regus Impex Private Limited and Kanpur Properties and Finance Private Limited – the Resolution Applicants*

2.7. Regus Impex Private Limited and Kanpur Properties and Finance Private Limited submitted their resolution plans on 25.10.2019.

*Request by Hindalco Limited to submit its Resolution plan*

2.8. In the interregnum, after the expiry of the last date of Expression of Interest, for submission of resolution plan, the Resolution Professional received a letter dated 5.12.2019 from Hindalco Limited stating that it was keen to submit its Expression of Interest, and sought detailed Information Memorandum from the Resolution Applicant.

2.9. As the prescribed period of submission of EoI had expired on 23.08.2019, the RP, by his letter dated 12.12.2019, informed Hindalco Limited that the last date for submitting EoI had long since expired. However, the letter dated 05.12.2019 submitted by Hindalco Limited would be placed before the CoC for its consideration. Subsequently, Hindalco Limited's letter dated 05.12.2019 was placed before the CoC at its 7<sup>th</sup> meeting convened on 16.12.2019. The letter was extensively discussed and ultimately resolved unanimously by all the members present constituting 87.40% of the total voting share not to entertain the request.

*Consideration of Resolution Plans by the CoC*

2.10. Kanpur Properties and Finance Private Limited did not offer any security deposit in support of its resolution plan. It was also not represented by anyone on the day of the meeting of the CoC. Further, the financials of the plan proposed by Regus Impex Private Limited were better than that of Kanpur Properties and Finance Private Limited.

2.11. The 7<sup>th</sup> meeting of CoC was convened on 16.12.2019 for discussion on the resolution plans. This meeting was attended by Bank of India, Gain E

Commerce Pvt Limited and Subhlaxmi Compusis Pvt Limited. The six other members of the CoC did not attend the meeting. After long discussion and deliberations, as per the direction of CoC, the Resolution plan dated 25.10.2019 received from Regus Impex Private Limited was put to vote. The resolution plan submitted by Regus Impex Private Limited was unanimously approved by all members who were present at the meeting and held 87.40% voting share.

- 2.12. The Resolution Plan by Regus Impex Private Limited was approved by the CoC in the voting held on 16.12.2019 and was passed with 87.40% in value of votes. The Resolutions have been placed at pg. 16-20 of the Application. The CoC also authorised the RP to file necessary application under section 30(6) of the IBC for approval of this Adjudicating Authority under section 31(1) of the IBC.
- 2.13. The RP has also submitted a detailed checklist showing compliance with the various provisions of the IBC and the CIRP Regulations.

### **3. *Salient Features of the Resolution Plan***

- 3.1. The RP has submitted that the rationale behind the Resolution Plan is as follows:
- a. Resolution Applicant intends to acquire the Company and set up a bicycle manufacturing facility.
  - b. The total scheme as mentioned in the Resolution Plan submitted by Regus Impex Private Limited is ₹340 crore which includes the requisite infusion of funds to meet the working capital requirement of the company.
  - c. The resolution will generate employment.

#### *Treatment of stakeholders*

- 3.2. The Resolution Plan provides for resolution strategy as set out in Clause 3 of the Resolution Plan.
- 3.3. As per the Information Memorandum, Balance Sheet and Provisional Balance Sheet, the net worth of the Company is completely eroded. Accordingly, the Liquidation Value of the Company is not sufficient to cover the debt of

Financial Creditors of the Company in full. Therefore, the Liquidation Value to the Operational Creditors or the other creditors or stakeholders, government dues, taxes etc. and other creditors and stakeholders is **NIL** and therefore they will not be entitled to receive any payment. Despite that, the resolution plan proposes to pay close to 65% of the operational dues claimed and admitted. This envisages a high recovery for the operational creditors and protects their interests.

- 3.4. The resolution plan provides employment generation which would greatly benefit the stakeholders including the local community which would impact the overall economy and the ancillary industry.

*Source of funds*

- 3.5. The Resolution Plan specifies statement showing sources of funds and applicability of the funds is mentioned hereunder:
- a. The source of funds that the Resolution Applicant proposes to invest amounting to a total of Rs 340 crores is stated to be as follows:
    - i. ₹40 crore in the form of equity; and
    - ii. ₹300 crore in the form of debt.
  - b. The amount as mentioned above shall be brought in upfront by liquidating investments held by Resolution Applicant, internal accruals or such other means (which have not been spelt out in the Resolution Plan).

*Management and Implementation*

- 3.6. Page 3 of the Resolution Plan captures the Plan at a glance.
- 3.7. Page 8 of the Resolution Plan provides for a managing committee to oversee implementation of the Plan.

*Payment schedule*

- 3.8. The Resolution Plan proposes payouts to various stakeholders as follows:

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<b>Particulars</b>	<b>Percentage</b>	<b>Time Frame#</b>
CIRP Process Cost	100%	Within 15 days
Payment to the Financial Creditors	30% of the total payment to be made to financial creditors	As per regulation 38 (within four months from the date of approval by the Adjudicating Authority)
	30% of the total payment to be made to financial creditors	As per regulation 38 (within six months from the date of 1 <sup>st</sup> payment)
	40% of the total payment to be made to financial creditors	As per regulation 38 (within six months from the date of 2 <sup>nd</sup> payment)
Payment to Operational Creditors	30% of the total payment to be made to operational creditors.	As per regulation 38 (within four months from the date of approval)
	30% of the total payment to be made to operational creditors.	As per regulation 38 (within six months from the date of 1 <sup>st</sup> payment)
	40% of the total payment to be made to operational creditors	As per regulation 38 (within six months from the date of 2 <sup>nd</sup> payment)

3.9. Further, the resolution plan envisages investment in plant and machinery to the tune of ₹40 crore, and ₹150 crore towards working capital requirement.

*Compliance with statutory provisions*

3.10. The Applicant has submitted details of various compliances as envisaged within the Code and the CIRP Regulations which a Resolution Plan should adhere to, which are reproduced hereunder:

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**I. Compliance with section 30(2) of the Code:**

Section of the Code	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes/No)
30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	Attached separately	Yes
30(2)	Whether the Resolution Plan:		
	(a) provides for the payment of insolvency resolution process costs?	Page 5, Point no. 4, Clause A	Yes
	(b) provides for the payment of the debts of operational creditors?	Page 5, Point no. 4, Clause C	Yes
	(c) provides for the management of the affairs of the corporate debtor?	Page 8 'Management & Implementation'	Yes
	(d) provides for the implementation and supervision of the resolution plan?	Page 8, 'Management & Implementation'	Yes
	(e) contravenes any of the provisions of the law for the time being in force?	Page 3, Para 3	Yes

**I. Compliance with Regulation 37 of the CIRP Regulations:**

Requirement with respect to Resolution Plan	Clause of Resolution Plan
(1) A Resolution Plan shall provide for the measures, as may be necessary, for insolvency resolution of the corporate debtor for maximisation of value of its assets, including but not limited to the following –	
(a) Transfer of all or part of the assets of the corporate debtor to one or more persons.	Clause 3 at Page 4 of the Resolution Plan.
(b) Sale of all or part of the assets whether subject to any security interest or not;	Not envisaged in the Plan
(ba) Restructuring of the corporate debtor by way of merger,	Clause 3 at Page 4 of the

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<b>Requirement with respect to Resolution Plan</b>	<b>Clause of Resolution Plan</b>
amalgamation and demerger.	Resolution Plan
(c) Substantial acquisition of shares of the corporate debtor, or the merger or consolidation of the corporate debtor with one or more persons.	Clause 3 at Page 4 of the Resolution Plan
(ca) Cancellation or delisting of any shares of the corporate debtor if applicable.	Not applicable
(d) Satisfaction or modification of any security interest.	Not envisaged in the Plan
(e) Curing or waiving of any breach of the terms of any debt due from the corporate debtor.	Not envisaged in the Plan
(f) Reduction in the amount payable to the creditors.	Clause 3.1 (in the case of financial creditors) at page 15 and clause 3.4 at page 16 of the Resolution Plan
(g) Extension of a maturity date or a change in interest rate or other terms of a debt due from the corporate debtor.	Not envisaged in the Plan
(h) Amendment of the constitutional documents of the corporate debtor.	Not envisaged in the Plan
(i) Issue of securities of the corporate debtor for cash, property, securities or in exchange for claims or interests or other appropriate purpose.	Not envisaged in the Plan
(j) Change in portfolio of goods or services produced or rendered by the corporate debtor.	The assets of the corporate debtor are proposed to be transferred to a special purpose vehicle.
(k) Change in technology used by the corporate debtor.	Not envisaged in the Plan
(l) Obtaining necessary approvals from the Central and State Govts and other authorities.	Not envisaged in the Plan
Whether Performance Security is provided? If so, the details such as name of Bank, Branch that provided guarantee and the amount involved.	Will be submitted/ renewed within the stipulated time after approval of the plan by the Adjudicating Authority.

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**II. Compliance with Regulation 38 of the CIRP Regulations:**

Clause	Description	How complied
38 (1)	The amount due to the Operational creditors under a resolution plan shall be given priority in payment over financial creditors.	Page 5, Point 4, Clause (c)
38 (1A)	A resolution plan includes a statement as to how it has dealt with the interests of all stakeholders.	Page 15, Point 3.2 and Page 16 Point 3.4
38 (1B)	(i) Whether the Resolution Applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any resolution plan approved by the Adjudicating Authority.	Page 3, Para 3
Regulation 38(2)	Whether the Resolution Plan provides:	
	(a) The term of the plan and its implementation schedule.	Page 5, Point no.4
	(b) For the management and control of the business of the corporate debtor during its term?	Page 8 'Management & Implementation'
	(c) Adequate means for supervising its implementation?	Page 8, 'Management & Implementation'
38(3)	Whether the resolution plan demonstrates that –	
	(a) It addresses the cause of default.	Page 6, Point 2.
	(b) It is feasible and viable.	Pages 8-9
	(c) it has provisions for its effective implementation?	Page 8, 'Management & Implementation & Page 9, Para 2.
	(d) it has provisions for approvals required and the timeline for the same?	No such provision in the Resolution Plan.
	(e) The Resolution Applicant has the capability to implement the	Page 9, para 2

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Clause	Description	How complied
	Resolution Plan.	

**Snapshot of the financial proposals**

***Financial creditors***

Sl.No.	Financial Creditors	Claim Verified	Amount Payable	Within 4 months from acceptance of Resolution Plan	In next 6 months from date of 1st payment	In next 6 months from date of 2nd payment
1	Bank of India	12,217,313	7,941,254	2,382,376	2,382,376	3,176,502
2	Dahisar Traders Pvt. Ltd.	76,715,466	49,865,053	14,959,516	14,959,516	19,946,021
3	Dunlop Polymer Pvt. Ltd.	553,169	359,560	107,868	107,868	143,824
4	Gain E-Commerce Pvt. Ltd.	690,365,924	418,737,851	134,621,355	134,621,355	179,495,140
5	Land Housing and Developers Pvt. Ltd.	192,603,103	125,192,017	37,557,605	37,557,605	50,076,807
6	Mekong Rubber Pvt. Ltd.	2,921,156	1,898,752	569,626	569,626	759,501
7	Miller Traders Pvt. Ltd.	341,458	221,947	66,584	66,584	88,779
8	Nandakini Contractors Pvt. Ltd.	2,233,768	1,451,949	435,585	435,585	580,780
9	Subhlaxmi Compus Pvt. Ltd.	1,207,236,613	784,703,798	235,411,139	235,411,139	313,881,519
	<b>Total</b>	<b>2,185,187,971</b>	<b>1,420,372,181</b>	<b>426,111,654</b>	<b>426,111,654</b>	<b>568,148,872</b>

***Operational Creditors***

Operational Creditor	Claim Verified	Amount Payable	Within 4 months from acceptance of Resolution Plan	In next 6 months from date of 1st payment	In next 6 months from date of 2nd payment
Noble Traders	6,730,553	4,374,859	1,312,458	1,312,458	1,749,944
<b>Total</b>	<b>6,730,553</b>	<b>4,374,859</b>	<b>1,312,458</b>	<b>1,312,458</b>	<b>1,749,944</b>

**4. *Waivers, reliefs and concessions sought***

4.1. The waivers, reliefs and concessions sought, and orders passed thereon, are as follows:

Sl No.	Waiver, relief or concession sought	Orders thereon
1.	On acceptance of resolution plan, the corporate debtor will be relieved of all	Granted in terms of para 95 (i) the judgment of the Hon'ble Supreme Court in <i>Ghanashyam Mishra</i>

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Sl No.	Waiver, relief or concession sought	Orders thereon
	liabilities, including but not limited to, financial creditors, operational creditors, workmen liability, any statutory liability like VAT, CST, State ST, customs and excise duty, SEBI, any statutory liability pertaining to workers etc.	<i>and Sons v. Edelweiss Asset Reconstruction Company Limited</i> <sup>1</sup> wherein it has been held that once a Resolution Plan is approved, a creditor cannot initiate proceedings for recovery of claims which are not part of the Resolution Plan.
2.	The corporate debtor along with any and all of the guarantors shall be relieved and nothing else of whatsoever nature shall be payable by the company, corporate debtor or any of its guarantors.	In <i>Lalit Kumar Jain v Union of India &amp; others</i> , <sup>2</sup> the Hon'ble Supreme Court held in para 125 that approval of a resolution plan does not <i>ipso facto</i> discharge a personal guarantor of her or his liabilities under the contract of guarantee, which arises out of an independent contract.
3.	All the cases including criminal and civil cases against the corporate debtor or any of its directors will be closed on acceptance of the resolution plan.	The provisions of section 32A of the Insolvency & Bankruptcy Code, 2016 shall apply.

**5. Findings**

- 5.1. On hearing the submissions made by the learned Counsel for the Resolution Professional, and perusing the records, we find that the Resolution Plan has been approved with 87.40% voting share. As per the CoC, the Plan meets the requirement of being viable and feasible for revival of the Corporate Debtor. By and large, all the compliances have been done by the RP and the

<sup>1</sup> 2021 SCC Online SC 313 dated 13.04.2021

<sup>2</sup> (2021) 9 SCC 321 : 2021 SCC OnLine SC 396

Resolution Applicant for making the Plan effective after approval by this Bench.

- 5.2. On perusal of the documents on record, we are satisfied that the Resolution Plan is in accordance with sections 30 and 31 of the Code and also complies with regulations 37, 38 and 39 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. No circumstances exist that militate against grant of approval for the Resolution Plan.

**6. Orders**

- 6.1. Therefore, subject to the observations made in this Order, we hereby accord our approval to the Resolution Plan. The Resolution Plan shall form part of this Order.
- 6.2. Any relief sought in the Resolution Plan, where any contract, agreement, understanding, proceeding, action, notice etc. not specifically identified, or is for a future contingency, is, at this point of time, rejected.
- 6.3. The Resolution Plan as approved is binding on the Corporate Debtor and other stakeholders involved so that the revival of the Corporate Debtor can come into force with immediate effect.
- 6.4. The Moratorium imposed under section 14 shall cease to have effect from the date of this order.
- 6.5. The Resolution Professional shall stand discharged from his duties with effect from the date of this Order. However, he shall perform his duties in terms of the Resolution Plan as approved by this Adjudicating Authority.
- 6.6. The Resolution Professional is further directed to handover all records, and properties to the Resolution Applicant to finalise the further line of action required for starting of the operation. The Resolution Applicant shall have

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access to all the records and premises of the corporate debtor through the Resolution Professional to finalise the further line of action required for starting of the operation.

- 6.7. In case of non-compliance of this order or withdrawal of Resolution Plan, the performance security amount already paid by the Resolution Applicant shall be liable to be forfeited.
- 6.8. Liberty is hereby granted for moving any Application if required in connection with implementation of this Resolution Plan.
- 6.9. The Resolution Professional shall file a copy of this Order with the Registrar of Companies, Odisha, Cuttack, *inter alia* for updating the status of the Corporate Debtor.
- 6.10. The application bearing IA No.197/CTB/2019 stand disposed of accordingly. Consequently, CP (IB) No.1/CTB/2019 shall stand closed.
- 6.11. Certified copy of this Order be issued on demand to the concerned parties, upon due compliance of requisite formalities.



**Satya Ranjan Prasad**  
**Member (Technical)**

  
Digitally signed by Rajasekhar V.K

**Rajasekhar V.K.**  
**Member (Judicial)**

Signed this 22<sup>nd</sup> day of December, 2021

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